Kansas' jurisdiction off-reservation. To the extent the decision below is contrary to the holding and analysis of the above-cited, controlling authorities, it must be reversed.

4. The decision below cites generalized federal legislation, proclamations, and executive orders as evidence of preemptive federal interests (Pet. App. 17). None, however, address motor vehicle titling and licensing, and where public safety and the exercise of the states' police power is concerned, it may be fairly assumed that Congress does not act *sub silentio* or by inference. *Brotherhood of Locomotive Engineers v. Chicago, R.I. & P.R. Co.*, 382 U.S. 423, 429 (1966). This provides assurance that "the federal state balance" will not be disturbed unintentionally by Congress or unnecessarily by the courts. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

In fact, the balance of federal interests concerning highway regulation are aligned with the states, not tribes. Federal legislation and regulations with regard to highways almost invariably authorize States to regulate and enforce their motor vehicle laws on their roads and bridges.

Examples of such federal regulation include the National Driver Registry Act, (which establishes a central national clearinghouse for information on drivers to assist States in exchanging information about motor vehicle driving records of individuals), 49 U.S.C.A. §§ 30301-30308; the National Motor Vehicle Title Information System, (which establishes a national clearinghouse of information on motor vehicle titles that will provide reliable access to information maintained by the states related to automobile titling), 49 U.S.C.A. §§ 30501-30505; and, the Federal Driver's Privacy Protection Act of 1994 (DPPA), (which mandated that states comply with Act's requirements with respect to disclosure of personal information from state driver's license records and required states to create and implement systems to enforce those requirements), 18 U.S.C.A. §§ 2721-2725. 23 U.S.C. § 402 (conditions States' receipt of federal funds for highway safety program on compliance with federal requirements, including vehicle registration and

licenses).[10] *See also, Uniform Guidelines for State Highway Safety Programs* 60 Fed. Reg. 36,641, which implements 23 U.S.C. § 402.

5. Last, the pernicious effect of the court of appeals' decision with respect to the States' administration of its laws off-reservation must be emphasized. Matters that states once thought were settled as matters of state interest (drivers license, teaching licenses, taxation, etc.) are now subject to the whims of whether a tribe writes a code and issues a license. Given *White Mountain Apache's* express recognition of the rule that off-reservation activities of Indians are generally subject to the prescriptions of a 'nondiscriminatory state law' in the absence of 'express federal law to the contrary', states have operated on the assumption that, at a *minimum*, they are free to apply their nondiscriminatory laws off-reservation, without reference to an *ad hoc* and amorphous test used to resolve the validity of on-reservation state activity.

The Court of Appeals' decision significantly contracts the States' sovereign power to regulate off-reservation transactions, constitutes a marked departure from the path-marking *Mescalero Apache Tribe*, and conflicts with precedent from this Court and the Ninth Circuit holdings cited above that the balance-of-interests test does not apply to off-reservation transactions.

Further, the court of appeals decision results in forced reciprocity. Forced reciprocity with any political entity when the plain language of the state statute is to the contrary is no less caustic to Kansas' sovereignty than the federal government compelling the States to enact or administer a federal regulatory program. *New York v. United States*, 505 U.S. 144, 188 (1992), or directing the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty . . . it is the very *principle* of separate state sovereignty that such a law offends . . . *Printz v. United States*, 521 U.S. 898, 932 (1997) (Emphasis in the original).

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[10] 23 U.S.C. § 101 defines "state" to mean: "any one of the fifty States, the District of Columbia, or Puerto Rico." The term "Indian tribe" is conspicuously absent from the definition of "state."

Kansas has a long history of regulating and licensing motor vehicles on its roads and bridges. The current Kansas Motor Vehicle Statutes found at Kan. Stat. Ann. § 8-101 *et seq.* (Supp. 1992) have their origins in Kansas law in Chpt. 67, § 1 of the Kansas Statutes Annotated, enacted in 1903. Yet, nearly a century later, Respondent enacts a Vehicle Code and the decision below has extended its reach off-reservation to preempt Kansas' long standing off-reservation regulation of vehicles.[11]

There are no discernable limits to the decision below. Logically, the reasoning of the court of appeals can now be used to preempt *any* state authority off-reservation simply because a tribe decides to issue a license or assess a fee. Thus, Respondent could issue its own drivers licenses, commercial drivers licenses, teaching certificates, medical and dental licenses (all of which are traditionally a function of state government), and oust state law. There is nothing in our body of law that supports such a conclusion.

CONCLUSION

For the foregoing reasons and those stated in the Petition, Kansas respectfully requests that the Court grant the petition for a writ of *certiorari*.

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[11] The court of appeals rejected Kansas' assertion that the dispute in this case is one of tribal control over Kansas. (Pet. App. 9). However, by preempting off-reservation application of Kansas law, the court of appeals has in practical effect extended tribal authority off-reservation. Thus, the decision ties Kansas' hands. This provides the same results as controlling Kansas: giving the tribe preemptive power off-reservation through the back door that it could not get through the front door under *Mescalero Apache*.